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Conner v. State, 361 So.2d 774 (Fla. 4th Dist. Ct. App. 1978), cert. denied, 368 So. 2d 1364

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Criminal Law—SELF-DEFENSE—RETREAT—INSTRUCTION ON DEFENSE OF HOME NEED NOT BE GIVEN WHERE VICTIM AND ACCUSED ARE MEMBERS OF SAME HOUSEHOLD, *Conner v. State*, 361 So.2d 774 (Fla. 4th Dist. Ct. App. 1978), *cert. denied*, 368 So.2d 1364 (1979).

On November 5, 1976, Perry Conner was shot to death by his mother.¹ At trial the mother contended that her mentally disturbed son had attacked and threatened to kill her. Despite her plea of self-defense, the mother, Annie Mae Conner, was adjudged guilty of manslaughter. Alleging that the trial judge erred by refusing to give a jury instruction on "defense of home," Annie Mae Conner appealed.²

In *Conner v. State*,³ the Fourth District Court of Appeal affirmed the conviction. The court held that the "defense of home" instruction need no longer be given in cases where the assailant and the assailed are legal occupants of the same "castle."⁴ The court reasoned that the retreat instruction given to the jury adequately protected the defendant's privilege of self-defense.⁵ The defendant appealed to the Florida Supreme Court, which denied certiorari.⁶ In view of the denial of certiorari, the *Conner* decision is significant because it signals the approaching end of the application of the castle doctrine if both the assailant and the accused are legal residents of the same home.

The castle doctrine is of ancient origin and provides that a person attacked in his dwelling is under no duty to retreat.⁷ The doctrine

1. Brief for Appellee at 4, *Conner v. State*, 361 So.2d 774 (Fla. 4th Dist. Ct. App. 1978), *cert. denied*, 368 So. 2d 1364 (1979).

2. *Conner v. State*, 361 So. 2d 774, 775 (Fla. 4th Dist. Ct. App. 1978), *cert. denied*, 368 So. 2d 1364 (1979). "Shortly before her arrest, Appellant made a sworn statement to police admitting that she fired one shot toward the floor which hit the deceased. She further stated that she armed herself after the deceased threatened to kill her." Brief for Appellant at 1.

3. 361 So. 2d at 775.

4. *Id.* 774-76. The "defense of home" instruction reads:

One unlawfully attacked in his own home or on his own premises has no duty to retreat and may lawfully stand his ground and meet force with force, including deadly force, if necessary to prevent imminent death or great bodily harm to himself or another, or to prevent the commission of a forcible felony.

THE SUPREME COURT COMMITTEE ON STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES, FLORIDA STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES 64 (2d ed. 1975) (hereinafter cited as STANDARD JURY INSTRUCTIONS).

5. 361 So. 2d at 775-76. The "retreat" instruction which was given provides:

If attacked by another, even though the attack is wrongful, he has the legal duty to retreat if by doing so he can avoid the necessity of using deadly force without increasing his own danger, but a person placed in a position of imminent danger of death or great bodily harm to himself by the wrongful attack of another has no duty to retreat if to do so would increase his own danger of death or great bodily harm.

STANDARD JURY INSTRUCTIONS, *supra* note 4, at 64.

6. 368 So. 2d 1364. (Fla. 1979).

7. 40 AM. JUR. 2d *Homicide* § 167 (1962).

derives its name from the maxim, "a man's home is his castle," and has probably been retained due to "an instinctive feeling that a home is sacred, and that it is improper to require a man to submit to pursuit from room to room in his own house."⁸ Some courts have extended this doctrine to include the area surrounding the home;⁹ other courts have further expanded the doctrine to include automobiles.¹⁰

Authority is divided as to whether the castle doctrine is applicable to situations where both the assailant and the assailed share the same living quarters.¹¹ A number of states adhere to the proposition that the status of the assailant makes no difference.¹² Courts in several of these states have quoted the court's rhetorical language in *Jones v. State*: "Why, it may be inquired, should one retreat from his own house, when assailed by a partner or co-tenant, any more than when assailed by a stranger who is lawfully on the premises? Wither shall he flee, and how far, and when may he be permitted to return?"¹³

In Florida, *Pell v. State*¹⁴ was an early case involving the issue pondered in *Jones*. Pell, the appellant, had been convicted of the second degree murder of a trespasser. The Florida Supreme Court reversed, citing the failure of the trial judge to instruct the jury on the nonnecessity of retreat when one is attacked in his home.¹⁵ As authority, the court cited *Allen v. United States*,¹⁶ where the United States Supreme Court found no error in the lower court's instruction to the jury that the defendant was under a duty to retreat as far as possible before slaying his assailant. The court indicated that had Allen been attacked in his home, he would have been under no obligation to retreat.¹⁷ Neither *Pell* nor *Allen*, however, involved an attack by a cotenant.

8. W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 19, at 111 (4th ed. 1971) (citing RESTATEMENT OF TORTS, Commentary to § 84 (Tent. Draft No. 1, 1931)).

9. *State v. Frizzelle*, 89 S.E.2d 725, 726 (N.C. 1955).

10. *State v. Borwick*, 187 N.W. 460, 463 (Iowa 1922).

11. Annot., 26 A.L.R. 3d 1296, 1299-1306 (1969).

12. See, e.g., *Davis v. State*, 261 So. 2d 783, 785, cert. denied, 261 So. 2d 785 (Ala. 1972) (husband or wife may defend common home against the other); *People v. Lenkevich*, 229 N.W.2d 298, 300 (Mich. 1975) (assailant was husband of the accused); *People v. Tomlins*, 107 N.E. 496, 497 (N.Y. 1914) (assailant son of the accused living in same home); *State v. Grantham*, 77 S.E.2d 291, 292 (S.C. 1953) (assailant wife of accused).

13. 76 Ala. 8, 16 (1884). See also *People v. McGrandy*, 156 N.W.2d 48, 49 (Mich. Ct. App. 1967); *People v. Tomlins*, 107 N.E. 496, 497-98 (N.Y. 1914).

14. 122 So. 110 (Fla. 1929).

15. *Id.* at 116. Pell allegedly shot and killed an armed officer who was attempting to search his garage. The officer possessed an invalid search warrant at the time of the shooting. *Id.* at 114-15.

16. 164 U.S. 492 (1896).

17. *Id.* at 498.

In 1965, the Florida Supreme Court again applied the castle doctrine in *Hedges v. State*.¹⁸ Ms. Hedges had appealed a conviction for the first degree murder of her boyfriend, who was on the premises pursuant to an invitation from the accused.¹⁹ Citing *Pell*, the supreme court reversed, finding that the trial judge erred by failing to instruct the jury that a person attacked in his home is under no duty to retreat.²⁰

Prior to *Conner v. State*, only two Florida cases applied the castle doctrine to circumstances where the assailant and the accused were legal residents of the same home. Like *Conner*, both *Watkins v. State*²¹ and *Stevenson v. State*²² were decided by the Fourth District Court of Appeal. Elizabeth Watkins killed her common law husband while arguing with him in their common dwelling. The appellate court found the trial court's refusal to instruct the jury on the nonnecessity of retreat from the home to be reversible error. The *Watkins* court relied on *Hedges v. State* despite the fact that the victim in *Hedges* was simply an invitee, having no authority or control over the premises.²³ The *Watkins* court stated, "A person attacked in his own dwelling, under conditions otherwise entitling him to strike in self-defense, is not required to retreat although his assailant also resides in the same dwelling."²⁴

In 1973, the fourth district reaffirmed the *Watkins* holding in *Stevenson v. State*. The *Stevenson* court, relying solely on *Watkins*, held that the castle doctrine *does* apply "to a situation where both parties are on the premises in question with equal authority and control."²⁵

In *Conner*, however, the Fourth District Court of Appeal receded from the *Watkins/Stevenson* position. Judge Letts, writing for a unanimous court, stated that the doctrine is no longer applicable if both the assailant and the assailed are "legal occupants of the same 'castle,' neither one having the legal right to eject the other . . ."²⁶

A frequently advanced argument in favor of the castle doctrine is that a person should not be required to abandon his home to avoid confronting an assailant. This argument places considerable weight on the notion that the home is a sacred place, a refuge for its occupants. "The sense in which [a man's] house has a peculiar immun-

18. 172 So. 2d 824 (Fla. 1965).

19. *Id.* at 825-26.

20. *Id.* at 827.

21. 197 So. 2d 312 (Fla. 4th Dist. Ct. App. 1967).

22. 285 So. 2d 61 (Fla. 4th Dist. Ct. App. 1973).

23. 197 So. 2d at 313.

24. *Id.* (citing *Baugh v. State*, 112 So. 157, 159 (Ala. 1927)) (emphasis supplied).

25. 285 So. 2d at 61.

26. 361 So. 2d at 776.

ity is, that it is sacred for the protection of his person and of his family."²⁷ Florida statutory law reflects a similar sentiment.²⁸

It has been said that the castle doctrine "[i]n its original applications . . . doubtless had in view only attacks from external aggressors"²⁹ Notwithstanding the validity of this statement, the fact remains that the doctrine evolved from a period when a man's home was his fortress against the attacks of his enemies and retreat from the home was dangerous. A man's "castle" was more removed from the protection of the community in earlier times and police protection was not what it is today. Thus it could be argued that modern, instantaneous communications systems have made the castle doctrine obsolete.

Even if the retention of the castle doctrine is deemed necessary for the ultimate protection of the home and family, there is little justification for applying it to situations where one lawful occupant is attacked by another in their common dwelling. Family members often become engaged in bitter quarrels which they later regret. In fact, a majority of murders are committed by a member of the victim's family or a friend or acquaintance.³⁰ Many of these killings occur in the home.³¹ Thus, if the major concern of the proponents of the castle doctrine is the sanctity of the home and the protection of the family, the logical approach is to limit the doctrine to attacks from external aggressors. Nothing could render the home less sacred and family members less protected than a rule which would allow a legal occupant of a dwelling the right to stand his ground and use deadly force against a cotenant instead of retreating from the dwelling.

Requiring a person to make a safe retreat, if possible, rather than permitting him to slay a lawful occupant and possibly a family member would reinforce, rather than undermine, the "sanctity" of the home. Requiring a person to retreat when attacked in his home by another occupant instead of allowing the assailed to retaliate

27. *State v. Patterson*, 45 Vt. 308, 320-21 (1873).

28. FLA. STAT. § 782.02 (1977) provides that: "The use of deadly force is justifiable when a person is resisting any attempt to murder such person or to commit any felony upon him or upon or in any dwelling house in which such person shall be." *But see* FLA. STAT. § 782.11 (1977) which states: "Whoever shall unnecessarily kill another, either while resisting an attempt by such other person to commit any felony, or to do any other unlawful act . . . shall be deemed guilty of manslaughter"

29. *Watts v. State*, 59 So. 270, 273 (Ala. 1912).

30. V. SWIGERT & R. FARRELL, *MURDER, INEQUALITY, AND THE LAW* 51 (1976); E. TANAY, *THE MURDERERS* 8 (1976); U.S. DEP'T OF JUSTICE, *CRIME IN THE UNITED STATES 1977*, at 12; *see* Edwards, *Commentary: Murder and Gun Control*, 18 WAYNE L. REV. 1335, 1336 (1972).

31. "It is a matter of common knowledge that a majority of all homicides are committed by close relatives and friends, many of these killings occurring in the home." 361 So. 2d at 776. *See also* V. SWIGERT & R. FARRELL, *supra* note 30, at 51.

would also provide for a "cooling off" period. The statewide adoption of the limited castle doctrine would not jeopardize life, but tend to preserve it, since a person in Florida is under no duty to retreat "if to do so would increase his own danger of death or great bodily harm."³²

The fourth district is the only Florida court that has applied the castle doctrine where the assailant and the accused were legal occupants of the same dwelling.³³ In *Conner*, the fourth district held that the castle doctrine is no longer applicable to such cases.³⁴ Since the Florida Supreme Court denied certiorari, it is doubtful whether "defense of home" can ever successfully be utilized in any Florida district if one lawful occupant is accused of killing another.

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32. STANDARD JURY INSTRUCTIONS, *supra* note 4, at 64. In the *Conner* case, for example, the son of the defendant had run in and out of the house during the prolonged argument. If the mother was in actual fear of her life, she could have locked the doors and called the police, or simply left the house. See Brief for Appellee at 6.

33. 361 So. 2d at 776.

34. *Id.*

